

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDAMERICAN ENERGY COMPANY	DOCKET NO. P-844
--	------------------

**ORDER ESTABLISHING ISSUES ON APPEAL AND SETTING  
DATE FOR FILING BRIEFS**

(Issued October 28, 2002)

On January 31, 2002, MidAmerican Energy Company (MidAmerican) filed a petition requesting that the Utilities Board (Board) issue a permit to construct, operate, and maintain a new natural gas pipeline. The pipeline will consist of 12.6 miles of 16-inch diameter pipeline and will take natural gas from a Northern Natural Gas Company pipeline at a connection point east of Ankeny, Iowa, to MidAmerican's Pleasant Hill Energy Center and the proposed Des Moines Energy Center. The two energy centers are located south of Pleasant Hill in Polk County, Iowa. MidAmerican has amended its petition on several occasions since January 31, 2002.

Iowa Code § 479.7 (2001) requires the Board to set a hearing in a pipeline proceeding upon the filing of a petition. On May 9, 2002, the Board assigned the docket to a presiding officer to establish a procedural schedule, set a hearing date and conduct the proceedings. The petition was identified as Docket No. P-844.

The presiding officer, by order issued May 22, 2002, established a procedural schedule and scheduled a hearing for July 30 and 31, 2002. The presiding officer

conducted the proceedings as scheduled and subsequently issued a proposed decision and order granting the petition and permit to MidAmerican on September 25, 2002.

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the presiding officer be filed within 15 days of the date the decision is issued. Appeals were timely filed by Dan Fogleman, Ken and Amber Williamson (the Williamsons), and Kenneth R. Silver and Harold K. Silver (the Silvers). Timely responses to the appeals were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and MidAmerican. The Silvers requested oral argument on the issues they raised.

Pursuant to 199 IAC 7.8(2)"d," the Board must issue a ruling on the issues to be decided on appeal within 20 days of the filing of the notice of appeal. The Board will set out the issues that will be considered on appeal and will set a date for filing briefs on those issues.

## **ISSUES FOR CONSIDERATION ON APPEAL**

### **1. The Williamsons**

The Williamsons own property through which the proposed route of the natural gas pipeline to be constructed by MidAmerican will pass. The Williamsons raised several issues on appeal. Those issues are discussed below.

A. Whether the Williamsons received certified notice as an affected landowner of the informational meeting as required by Iowa Code § 479.5.

The Williamsons indicated in their notice of appeal that they received the certified notice. MidAmerican points this out in its reply.

The Board finds that this is not an issue for consideration on appeal. Iowa Code § 479.5 provides the method of notice to landowners who are affected by the proposed pipeline and the Williamsons received that notice. In addition, MidAmerican complied with the requirements of 199 IAC 10.4(2) for petitions seeking eminent domain.

B. Whether the decision to change the route after the informational meeting was based upon factors other than engineering concerns or costs of the route proposed at the informational meeting, such as the relationship of one of the landowners along the original route to MidAmerican.

This issue was not addressed by MidAmerican in its response. The Board finds that this issue should be considered on appeal.

C. Whether MidAmerican has complied with the "Proposed Decision And Order Granting Permit" in relocating the pipeline on the Williamsons' east property line.

MidAmerican contends there is no time limit in the proposed decision for rerouting the pipeline across the Williamsons' property or filing an amended Exhibit H. MidAmerican also asserts that the proposed decision only requires the relocation of that portion of the pipeline that runs approximately north-south near the Williamsons' east property line in Tract 9.

The Board finds this is an issue that will be considered on appeal to clarify where the relocation is to occur and whether there should be a time limit placed on completion of the relocation and the filing of an amended Exhibit H.

D. Whether MidAmerican has negotiated in good faith with the Williamsons. MidAmerican indicates that it has met with the Williamsons on two occasions since the proposed decision was issued and they “remain recalcitrant.”

The Board finds that this issue is part of the issue discussed in paragraph C above.

E. The Williamsons also raised the issue of the proper valuation of the property where a gate valve is to be located. The Board does not have jurisdiction over the valuation of property taken by eminent domain, so this is not an issue to be decided on appeal.

## **2. The Silvers**

The Silvers own property through which the proposed route of the natural gas pipeline to be constructed by MidAmerican will pass. The Silvers raised one issue that the Board finds should be considered on appeal. The issues raised by Silver are set out below:

A. The Silvers raised several questions concerning the testimony and evidence to support the Direct Route. The relief requested by the Silvers on this issue is to reopen the record for additional testimony regarding the

length of the Direct Route and the Highway 65 Route and additional testimony and evidence concerning construction costs for the two routes. MidAmerican contends that the evidence in support of the proposed decision is both competent and substantial and that the taking of further evidence is unnecessary.

The Board finds that the Silvers have raised an issue that will be considered on appeal. The issue is whether there is competent and substantial evidence to support the findings of the presiding officer or whether the record should be reopened for further evidence.

B. If the Board reopens the record, the Silvers argue that the Board should have an independent third party evaluate any additional testimony and evidence that is filed by MidAmerican. MidAmerican opposes the reopening of the record.

The Board has considered this issue and finds it does not raise material issues of fact or law that are necessary to be considered on appeal. Iowa Code § 479.11 authorizes the Board to examine the proposed route by an engineer selected by the Board. The Board had the route proposed by MidAmerican examined by Don Stursma, the Manager of the Board's Engineering and Safety Section. Mr. Stursma conducted an independent examination of the route and that examination was filed in the record and Mr. Stursma was subject to cross-examination by the parties. If the record is

reopened and additional information filed, Mr. Stursma will examine that information for the Board.

C. The Silvers raised the issue of whether the public was adequately represented by the attorney representing Consumer Advocate. The Consumer Advocate attorney who appeared at the hearing and cross-examined the witnesses was called away from the hearing during the last hour and was not present for closing argument. Another attorney from Consumer Advocate's office represented Consumer Advocate for the last hour.

As pointed out by Consumer Advocate, the hearing was down to the last hour and the only significant matter that the original attorney for Consumer Advocate did not complete was the closing argument. A review of the record shows that all procedural matters were properly handled by the second Consumer Advocate attorney. Since the parties were allowed to file briefs, the absence of the original attorney from closing argument did not compromise Consumer Advocate's case. The Board finds this is not an issue that needs to be considered on appeal.

### **3. FOGLEMAN**

Fogleman owns property in Pleasant Hill, Iowa, near the route of the natural gas pipeline proposed to be constructed by MidAmerican. Fogleman raised two issues that the Board will address below.

A. Whether the dangers of placing a high-pressure natural gas pipeline within the same corridor as a high voltage electric transmission line were properly considered. MidAmerican argues that the evidence in the record is sufficient to support the decision in the proposed order that the placing of the proposed pipeline in the electric transmission line corridor is reasonable and all safety concerns have been addressed.

The Board finds that this issue will be considered as part of the Board's review of whether the proposed decision is supported by competent and substantial in the record when the record is viewed as a whole. This issue will be considered with Silvers' issue A discussed above.

B. Whether the proposed order properly evaluated the protection of the safety and welfare of the public as required by Iowa Code § 479.1. MidAmerican contends that that Fogleman's notice of appeal provides no basis for consideration of this issue on appeal.

The Board finds that the issue of the safety and welfare of the public is an issue that it will consider on appeal.

The Board will allow the parties to file briefs concerning the issues the Board has identified as issues to be decided on appeal. The Board will reserve a decision whether to reopen the record until it has completed consideration of the issues and the briefs. The Board will not schedule oral argument at this time. Additionally, the

Board reserves the right to address other issues that it finds to be relevant during its consideration of the proposed order.

**IT IS THEREFORE ORDERED:**

Briefs addressing the issues to be decided by the Utilities Board on appeal, as described in this order, may be filed on or before November 4, 2002.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 28<sup>th</sup> day of October, 2002.